

**FIRST AMENDMENT
to the
SEWER EXTENSION AGREEMENT
BETWEEN
THE CITY OF COLUMBIA, MISSOURI
AND
SETZER PROPERTIES, LLC**

This Amendment No. 1 to the Sewer Extension Agreement between the **CITY OF COLUMBIA, MISSOURI** a municipal corporation (“CITY”), and **KW COU, LLC**, an Arizona Limited Liability Company authorized to transact business within the State of Missouri (“Assignee Developer”), is made as of the date of the last signatory noted below.

RECITALS

- A. WHEREAS, on or about June 2, 2024, CITY and Setzer Properties, LLC entered into an Agreement (“Sewer Extension Agreement”) for connection to and provision of City sewer services for certain unincorporated land located in Boone County near Interstate I-70 Highway and State Route Z (Ordinance No. 025683); and
- B. WHEREAS, on or about November 4, 2024, pursuant to paragraph 18 of the Sewer Extension Agreement, Setzer Properties, LLC assigned, and Assignee Developer accepted, all of Setzer Properties, LLC’s rights, privileges, title, and interest in, to and under, and obligations, duties and liabilities under said Sewer Extension Agreement (Bill No. B253-2024); and
- C. WHEREAS, Assignee Developer intends to purchase the subject property of said Sewer Extension Agreement; and
- D. WHEREAS, the Parties hereto desire to formally amend the Sewer Extension Agreement with this First Amendment (hereinafter “First Amendment”) and desire to be bound by the terms contained in the Sewer Extension Agreement as amended or supplemented by those terms contained in this First Amendment.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual benefit to be derived by the parties, it is agreed to amend the Sewer Extension Agreement, as follows:

- 1. Section 10 of the Sewer Extension Agreement shall be deleted in its entirety and replaced with the following:

“Prior to the City’s acceptance of the Development, or reimbursements paid to Developer, Developer shall enter into a separate agreement with City providing for

Property to be annexed into the City when Property becomes contiguous and compact to City limits. Said agreement shall be in substantially the same form as the Annexation Agreement attached hereto as "Exhibit D."

2. Section 38(a) of the Sewer Extension Agreement shall be deleted in its entirety and replaced with the following:

"a. The following persons are designated by the respective Parties to act on behalf of such Party and to receive all written notices and payment invoices:

IF TO CITY:

City of Columbia
Utilities Department
P.O. Box 6015
Columbia, MO 65205-6015

IF TO DEVELOPER:

KW COU, LLC
Attn: Kevin Kiernan
2525 E. Broadway Blvd. Suite 201
Tucson, AZ 85716"

3. All other terms of the Sewer Extension Agreement shall remain unchanged and in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment to the Sewer Extension Agreement Between the City of Columbia and Setzer Properties, LLC , on the day and year last written below.

CITY OF COLUMBIA, MISSOURI

By: _____
De'Carlton Seewood, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor/jc

CERTIFICATION: I, hereby certify that no City funds shall be expended pursuant to this Contract except for potential costs for City to acquire easements necessary to Development which will be reimbursed to City by Developer, and except for potential Development cost reimbursement from City to Developer or as otherwise provided within § 22-229 of City code.

By: _____
Matthew Lue, Finance Director

KW COU, LLC

ATTEST:

By: _____

By _____

Title: _____

Name and Title

Date

ANNEXATION AGREEMENT

This Agreement between the City of Columbia, Missouri, a municipal corporation (hereinafter “City”) and KW COU, LLC, an Arizona Limited Liability Company duly authorized to conduct business in the State of Missouri, (hereinafter “Owner”) is entered into as of the last date of all of the parties to execute the Agreement (the “Effective Date”). In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Owner hereby represents that Owner is the sole legal owner of the following described real estate located in Boone County, Missouri and has the capacity to enter into this Agreement:

A TRACT OF LAND LOCATED IN THE SOUTH HALF OF SECTION 6, TOWNSHIP 48 NORTH, RANGE 11 WEST, BOONE COUNTY, MISSOURI AND BEING PART OF A TRACT AS DESCRIBED IN WARRANTY DEED RECORDED IN BOOK 4822, PAGE 120 AND BEING ALL OF A TRACT OF LAND AS SHOWN BY A SURVEY RECORDED IN BOOK 5907, PAGE 105 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE EAST AND MOST SOUTHERN CORNER OF LOT 2, AMERICAN OUTDOOR BRANDS, PLAT NO. 1 RECORDED IN PLAT BOOK 52, PAGE 68, SAID POINT BEING ON THE NORTH RIGHT OF WAY LINE OF ENTERPRISE DRIVE AND WITH THE EAST LINE OF SAID LOT 2, N 0°19'30"W, 889.06 FEET; THENCE LEAVING SAID EAST LINE AND WITH THE SOUTH LINE OF SAID LOT 2, N 89°40'30"E, 1982.03 FEET TO THE SOUTH AND MOST EAST CORNER OF SAID LOT 2; THENCE LEAVING SAID SOUTH LINE, S 0°19'30"E, 989.74 FEET TO THE SOUTH LINE OF SAID SECTION 6; THENCE WITH SAID SOUTH LINE, S 89°11'00"W, 1381.65 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 6; THENCE CONTINUING WITH SAID SOUTH LINE, S 88°56'05"W 493.46 FEET TO THE SOUTHEAST CORNER OF SAID ENTERPRISE DRIVE RIGHT OF WAY; THENCE LEAVING SAID SOUTH LINE AND WITH THE EAST LINE OF SAID RIGHT OF WAY, N 1°03'55"W, 120.00 FEET; THENCE LEAVING SAID EAST LINE AND WITH THE NORTH LINE OF SAID RIGHT OF WAY, S 88°56'05"W, 55.00 FEET; THENCE CONTINUING ALONG SAID NORTH LINE, 50.47 FEET ALONG A 4950-FOOT RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD, S 89°13'35"W, 50.46 FEET TO THE POINT OF BEGINNING AND CONTAINING 45.15 ACRES.

(hereinafter the “Property”).

2. Owner proposes to design and construct certain sanitary sewer extensions to serve the Property, identified as parcel II, and 34 additional parcels (A-HH) containing a total of 675-acres as shown within Exhibit A attached hereto and incorporated herein by this reference (the "Project Area"). Owner shall dedicate at no cost to City the public utility, construction, and all other easements reasonably necessary for the construction, operation, and maintenance of the sanitary sewer lines serving the Project Area.

3. City agrees to allow Owner to connect sanitary sewer lines serving the Property to the City's sanitary sewer system as set forth herein and in accordance with the Sewer Extension Agreement attached hereto as Exhibit B between the City of Columbia and Setzer Properties, LLC, its successors, heirs, or assigns, and any amendments thereto, which is hereby incorporated as if fully set forth herein. The Assignment of Sewer Extension Agreement assigning the rights, privileges, duties, and obligations of Setzer Properties, LLC pursuant to the Sewer Extension Agreement to KW COU, LLC is attached hereto as Exhibit C, and incorporated herein. Owner shall make the connection to the City's sanitary sewer system at Owner's sole cost and expense. Owner shall obtain all necessary permits for the sewer construction and connection and shall pay all fees required to connect the Property to the City's sewer system. Following connection to the City's sanitary sewer system, the Property shall become a sewer customer of the City and subject to payment of all monthly fees and charges as set forth in the city code.

4. All sewer lines and appurtenances serving the Property and Project Area shall be located within standard sewer or utility easements dedicated to the public use and constructed in compliance with City regulations and standards. Construction of the sewer lines and appurtenances shall be inspected by the City as though the property were within the City limits and shall be subject to City approval. The sewer lines and appurtenances shall be conveyed to the City following construction and approval.

5. The sewer lines constructed by Owner to serve the Property and the Project Area shall not be connected to any other property or sewer lines without the express written consent of the City.

6. Code Compliance

- a. Except as provided in Paragraph 6e, development and construction on the Property by Owner shall conform to all Boone County ordinances and standards for the duration the property remains outside the city limits. During such time, Owner agrees to obtain all required approvals from the appropriate Boone County authorities for zoning, platting and all applicable development and construction permits necessary to construct a trucking facility on the Property with an investment estimate of \$35 million to \$40 million and estimated sanitary sewer flow of less than 3,000 gallons per day.
- b. Once annexed into the City, development and construction on the Property shall conform to all City standards, including, but not limited to, the Unified Development Code. Provided, however, any phase of development under construction at the time of annexation may be completed under applicable Boone County requirements together with inspections and approvals by Boone County provided the construction is completed within two (2) years following the date of annexation. Nothing in this Paragraph constitutes a waiver of the obligation to comply with City standards as indicated in Paragraph 6e.
- c. The Property shall be exempt from all City street lighting construction requirements both before and following annexation.

- d. Following construction, all sanitary sewers, storm sewers, streets and sidewalks intended to serve the public shall be forever dedicated to the public use.
- e. In the event of construction and development on the Property prior to annexation, Owner shall construct and maintain the following items in connection with such development as required by the city code as though the Property is located within the City limits: (1) tree preservation areas (note: per city code, tree preservation plans must be approved prior to any land disturbance), if applicable; (2) street frontage landscaping (note: per city code, a landscape plan must be approved prior to any land disturbance); (3) installation of a five (5) foot sidewalk along development's Enterprise Road frontage, and; (4) compliance with the International Fire Code, as adopted and amended by City ordinance ("City Fire Code"). Compliance with this paragraph 6(e) regarding any pre-annexation construction and development is a necessary condition for annexation into City.
 - i. Owner shall submit a tree preservation plan, if applicable, to the City Arborist for approval accompanied by a processing fee payment of \$200.00. If required, such plan shall provide for one or more common lots containing at least 25% of the pre-development climax forest as required by the City's tree preservation ordinance, or, in the alternative, the plan shall provide for 30% of the pre-development climax forest preserved through a combination of common lots and preservation easements, with at least 20% of the pre-development climax forest contained in one or more common lots. The tree preservation easement shall be in a form satisfactory to the City. In presenting the tree preservation plan to the city, Owner shall provide a plan that is in compliance with the requirements of Chapter 29-4.4 (Landscaping, Screening, and Tree Preservation) of the Unified Development Code, as amended and adopted by City Ordinance.
 - ii. Owner shall submit a landscaping plan to the City Arborist for approval accompanied by a processing fee payment of \$200.00. The plan shall comply with the "Street Frontage Landscaping" requirements of Chapter 29-4.4 (Landscaping, Screening and Tree Preservation) of the Unified Development Code, as amended and adopted by City Ordinance.
 - iii. Owner shall submit a photometric lighting plans to the City for approval accompanied by a processing fee of \$100. Such lighting plans shall demonstrate that on-site lighting is in compliance with the requirements of the Chapter 29-4.5 (Exterior Lighting) of the Unified Development Code, as amended and adopted by City Ordinance.
 - iv. Owner shall submit a copy of the proposed final plat and required revision(s) as well as a copy of the proposed construction plans and required revision(s) to the City Fire Marshal for review and approval concurrent with application to seek Boone County Planning and Zoning Commission or County Commission approval of the final plat or issuance of a land disturbance permit authorizing the installation of infrastructure. The plat and plans submitted to the City Fire Marshal shall demonstrate compliance with the City Fire Code.

7. Development and construction on the Property shall be subject to County standards and City standards as specifically set forth in paragraph 6(a)-6(e). During the period when Owner is constructing or developing the Project, if any irreconcilable conflict exists between a County regulation and a City regulation, the Owner, to the extent required by law, shall follow the County regulation including County storm water standards. Owner acknowledges that no conflict is involved where a City regulation, except City storm water standards, imposes a more stringent minimum requirement than a corresponding County regulation or in any instance where the City imposes a regulation that is not imposed by the County. In such instance, Owner shall be required to follow the more stringent requirement.

8. The City address numbering plan shall be complied with in connection with the development of the Property.

9. To the extent allowed by law, at such time as the Property becomes contiguous to the corporate limits of the City, City may, but shall not be obligated to, annex the Property into the City, without further action of the Owner. The City in its sole discretion may, but shall not be required to, delay annexation of the Property until such time the Property is contiguous to the City by property having frontage on an adjacent roadway which serves the Property, or until any other such time the City reasonably and solely determines to be appropriate to annex the Property and provide available municipal services to the Property.

10. Owner irrevocably appoints the City Manager of Columbia, Missouri, as its attorney-in-fact for the sole purpose of presenting a verified petition requesting annexation of the Property to the City Council of Columbia, Missouri. The City Manager may exercise this power of attorney at any time after the Property becomes contiguous to the corporate limits of the City. Any delay in filing such petition shall not be deemed a waiver of any right of the City to file such petition at such time in the future, in the sole discretion of the City, the filing of such petition is deemed advisable.

11. In lieu of the power of attorney granted to the City Manager herein, the City Manager may request the Owner to submit a verified petition requesting annexation. In such event, Owner shall, within such time as specified by the City Manager, submit a verified petition requesting annexation of the Property to the Director of Community Development for presentation to the City Council of Columbia, Missouri. The City Manager may request Owner to present an annexation petition at any time after the Property becomes contiguous to the corporate limits of the City. The provisions of this paragraph shall be enforceable by specific performance.

12. The petition for annexation may request that the Property be placed in Zoning District IG (Industrial), or equivalent, upon annexation. If the proposed ordinance annexing the Property does not place the Property in the zoning district specified herein, Owner may withdraw the petition for annexation. Such withdrawal shall not affect the parties' obligations under this Agreement, including City's obligation to provide sewer service.

13. Except as expressly set forth in paragraph 12 hereof, Owner agrees not to take any action to oppose any annexation initiated by the City which includes the Property. Owner further agrees not to take any action to oppose any annexation initiated by the City or by any property owner which includes any property lying between the Property and the City limits.

14. Owner shall give a copy of this Agreement to each person who buys all or a portion of the Property.

15. If Owner fails to comply with any of the provisions of this Agreement, City may terminate sewer service to the Property and disconnect the sewer lines serving the Property from the City's sanitary

sewer system. City shall give Owner one hundred eighty (180) days prior written notice of its intent to terminate sewer service.

16. This Agreement is not intended to confer any rights or remedies on any person other than the parties.

17. The benefits and burdens of this Agreement are intended to attach to and run with the land and shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, heirs and assigns. However, no assignment of the rights and obligations herein shall be made without prior written consent of the City. All persons claiming under the parties shall conform to and observe the provisions of this Agreement.

18. Owner on behalf of itself and its successors, heirs, or assigns, at Owner's sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, contractual damages and losses, economic damages and losses, any and all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, out of either Owner's breach of this Agreement or any action or inaction of Owner, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Owner may be liable, occurring during the construction of public improvements related to Owner's development which results in injury to any third party, except to the extent such injury arises from or is caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this paragraph shall survive for a period of five (5) years from the date of the later of City's acceptance of public improvements or the last day of any warranty work relating to such public improvements.

19. This Agreement shall be construed according to the laws of the State of Missouri. The parties shall comply with all local, state, and federal laws and regulations relating to the performance of this Agreement.

20. Any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Boone County, Missouri.

21. This Agreement contains the entire and complete agreement between the City and the Owner. The parties agree that this Agreement constitutes a lawful contract between the parties and the Owner hereby acknowledge and agree that this Agreement and the City's ordinances and regulations applicable to this Agreement constitute lawful exercises of the City's authority and police power.

22. The City shall record this Agreement in the office of the Boone County Recorder of Deeds.

[SIGNATURES ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day set forth below each of their signatures.

CITY OF COLUMBIA, MISSOURI

By: _____
De'Carlton Seewood, City Manager

ATTEST: Date: _____

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/jc

STATE OF MISSOURI)
) ss
COUNTY OF BOONE)

On this ____ day of _____, 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that such person is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and the City Manager acknowledged this instrument to be the free act and deed of the City.

IN TESTIMONY WHEREOF, I have hereunto set by hand and affixed my official seal, at my office in Columbia, Boone County, Missouri, the day and year last above written.

Notary Public

My commission expires: _____.

Exhibit A

Project Area of Connection Agreement

Exhibit B

Approved Connection Agreement (Ordinance # 025683)

Exhibit C

Assignment of Sewer Extension Agreement (Bill/Ord #)